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#### BIHAR ELECTRICITY REGULATORY COMMISSION

##### NOTIFICATION

*The 2<sup>nd</sup> April 2018*

No. BERC-SMP-27/2017-03— In exercise of powers conferred under Sections 86 (1) (b) and 181 of the Electricity Act, 2003(36 of 2003) and all other powers enabling the Commission in this behalf, the Bihar Electricity Regulatory Commission hereby makes the following Regulations for Power Purchase and Procurement Process of Licensee in the State.

**1. Short Title, Extent and Commencement**

- 1.1 These Regulations shall be called Bihar Electricity Regulatory Commission (Power Purchase and Procurement Process of Licensee) Regulations, 2018.
- 1.2 These Regulations extend to the whole of the State of Bihar.
- 1.3 These Regulations shall come into force from the date of their publication in the official gazette of the Government of Bihar.

**2. Definitions**

- 2.1 In these Regulations, unless the context otherwise requires:-
  - (i) “**Act**” means the Electricity Act, 2003 (36 of 2003);
  - (ii) “**Bidding Guidelines**” means the Guidelines for determination of tariff by bidding process for procurement of short/long term power by Distribution Licensee(s) issued by the Ministry of Power, Government of India under Section 63 of the Act;
  - (iii) “**CERC**” means the Central Electricity Regulatory Commission constituted under Section-76 of the Electricity Act, 2003;

- (iv) “**Commission**” means the Bihar Electricity Regulatory Commission;
- (v) “**Conduct of Business Regulations**” means the Bihar Electricity Regulatory Commission (Conduct of Business) Regulations 2005 as amended from time to time;
- (vi) “**Current Year**” means the financial year in which the power procurement plan is filed by the Licensee;
- (vii) “**Ensuing Year**” means the financial year immediately following the current year;
- (viii) “**Licensee**” means a person who has been granted a distribution licence under the Act and shall also include a deemed Licensee;
- (ix) “**Long term procurement of power**” means procurement of electricity including medium term for a period exceeding one year;
- (x) “**Previous Year**” means the financial year immediately preceding the current year;
- (xi) “**Power Purchase Agreement (PPA)**” means the agreement entered into between the Procurer(s) and the Seller pursuant to which the Seller shall supply power to the Procurer(s) as per the terms and conditions specified therein;
- (xii) “**Procurer(s)**” means the Distribution Licensee(s), or the representative of the Licensee(s) authorized by the Distribution Licensee(s) to perform all tasks of procurement of power in accordance with these regulations;
- (xiii) “**Short term procurement of power**” means procurement of electricity for a period less than or equal to one year;
- (xiv) “**Year**” means financial year beginning 1st April and ending on 31st March of following year.

2.2 The words and expressions used and not defined in these Regulations but defined in the Act, shall have the meanings assigned to them in the Act.

### 3. **Scope of Application**

- 3.1 Section 86 (1) (b) of the Act stipulates that the State Commission shall regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State.
- 3.2 These Regulations framed as per requirement stated in Sub-Regulation 3.1 above shall be followed by the Distribution Licensee(s) in following cases:
  - a) While preparing short/long term forecasting of demand (MW), energy requirement (MU) and availability;
  - b) While formulating short/long term Power Procurement Plan to meet its obligations as distribution licensee;
  - c) While making short/long term power procurement in accordance with the power procurement plan approved by the commission .
  - d) While making additional power procurement beyond the scope of approved power procurement Plan
- 3.3 These Regulations shall apply to all inter/intra state purchase and procurement of power by the Licensee(s) in the state of Bihar.

**4. Assessment of Demand and Energy Requirements**

- 4.1 The Distribution Licensee(s) shall make an assessment of demand (MW) and energy requirement for peak and off-peak period of the day for all the months of the year for next one year (Short term) and for next ten years (Long term) on monthly basis. The demand and energy requirements shall be worked on peaking capacity (MW) and energy basis (MU). The forecast shall be done based on load duration curve explicitly defining the base load and peak load in such a way that unrestricted 24 hours supply of adequate and uninterrupted power can be ensured to all categories of consumers by 2021-22 or earlier.
- 4.2 The assessment shall be based on historical data, load requirement projections in accordance with the business plan and likely impact of implementation of efficiency improvement programmes including but not limited to T&D loss reduction initiatives and DSM programmes.
- 4.3 While making forecast, licensee(s) shall also take into consideration the following along with other relevant factors –
  - (i) Weather forecast and seasonal variations;
  - (ii) Overall economic growth projections;
  - (iii) Likely impact of implementation of DSM Regulations;
  - (iv) Projected efficiency gains due to implementation of T&D loss reduction initiatives and other improvement programmes;
- 4.4 The analysis must also consider the impact of the provisions of the Act and possible switch over of consumers to open access and captive generation;
- 4.5 The Distribution Licensee (s) shall also be guided by the methodology adopted in the latest Electric Power Survey of Central Electricity Authority (CEA) for the State.

**5. Assessment of Availability**

- 5.1 The Distribution Licensee(s) shall make an assessment of the availability of power and energy from different sources for peak and off-peak periods of the day for all the months of the year for next one year (short term) and for next ten years (long term) on monthly basis.
- 5.2 The assessment of availability shall be based on the following, among other relevant information and inputs:-
  - (i) Existing share of power from plants including generating plants owned and/or operated by the State/Distribution Licensee(s), Central Sector and other sources of power;
  - (ii) Availability of Renewable energy from sources within and outside the State
  - (iii) New generating stations due for commissioning and expected share of the licensee(s);
  - (iv) Banking power arrangements;
  - (v) Up-rating of existing power plants;
  - (vi) Phase out of old stations or non-availability of capacity due to extended period of maintenance/ renovation of old generating plants
  - (vii) Maintenance schedules of generating stations owned or operated by the licensee(s) or the State, and Central Sector Plants and other sources of power;

- (viii) Renewable purchase obligation
  - (xi) The Distribution Licensee (s) shall also be guided by the methodology adopted in the latest Electric Power Survey of CEA for the State.
- 5.3 For making the assessment of availability the following criteria shall also be adopted for Peak Demand (MW) and Energy (MUs) calculations.

**(i) Assessment on Peak Demand basis**

- (a) In case of Hydro Power Plants, availability to be considered shall be subject to project specific hydrological constraints & variations and auxiliary consumption shall be taken as per CEA norms.

Provided that if a relaxed norm is approved for any project by the BERC/CERC, the same shall be considered.

- (b) In case of Thermal & Gas based Power Plants, Plant Availability Factor and auxiliary consumption shall be taken as per CEA norms.

Provided that if a relaxed norm is approved for any project by the BERC/CERC, the same shall be considered.

- (c) In case of Nuclear Power Plants, Plant Availability Factor shall be taken as per prevailing norms;
- (d) In case of Renewable energy projects within the State, Plant Availability Factor and auxiliary consumption shall be taken as per norms applicable;

**(ii) Assessment on Energy basis**

- (a) Generation from existing Hydro Power Plants & share and/or royalty shall be taken as average of last 3 years actual generation;
- (b) In case of new Hydro Power Plants availability shall be considered 100 % during June to September and for remaining months the availability shall be as per CEA norms;
- (c) Generation from own existing Thermal Plants shall be taken as the average of all thermal units for three years whereas generation of existing Central Sector Thermal Plants shall be taken as same as the actual generation of all Thermal Plants during last year;
- (d) In case of new Thermal and Gas based Power Plants, Plant Availability Factor and auxiliary consumption shall be taken as per CEA norms;
- (e) Generation from existing Renewable energy Plants within the State shall be taken as actual generation for the last year whereas for new plants, Plant Availability Factor and auxiliary consumption shall be taken as per norms applicable;
- (f) In case of existing and new Nuclear Power Plants, availability of energy, Plant Availability Factor and auxiliary consumption shall be taken as per norms;

- (g) Inter State transmission losses for each month shall be taken as average of the corresponding month of the last year whereas Intra State transmission losses shall be taken as average of the last year.

5.4 The Distribution Licensee (s) shall also be guided by the methodology adopted in the latest Electric Power Survey of CEA for the State.

**6. Power Procurement Plan.**—On the basis of demand/energy forecast and availability projections in accordance with provisions of these Regulations, the Distribution Licensee shall prepare a Power Procurement Plan for procuring balance power and energy under short term power procurement plan and long term power procurement plan.

**6.1 Long Term Power Procurement Plan**

6.1.1 The long-term Power Procurement Plan shall be prepared by the Distribution Licensee(s) on the basis of the rolling plan for ten years. The plan shall be prepared on monthly basis as per the principles laid down earlier in the Regulations. The procurement of power through Long term should be at least equal to the base load assessed under Regulation 4 of these Regulations.

6.1.2 The long-term Power Procurement Plan shall be strictly as per merit order principle and it should be the least cost plan [least financial cost to the Distribution Licensee(s)], the ultimate objective being to make available secure and reliable power supply at economically viable tariffs to all consumers while satisfying power supply planning and security standards;

Provided that the must run Plants/generators shall be exempted from merit order principle.

6.1.3 The licensee(s) shall have to submit the following details for the past three years along with long-term power procurement plan:-

- a) Month wise details (with year-wise totals) indicating power produced by generating stations owned or operated by the Distribution Licensee(s)/State, Central sector generating stations and other sources of power with whom long-term power purchase agreements have been entered into, short-term purchases of electricity in MU and expenses along with per unit cost;
- b) Month-wise, category-wise energy sales to consumers and losses in its area of operation.

6.1.4 The rolling plan shall be integral part of the ARR to be filed every year. The first long term Power Procurement Plan shall be submitted by the licensee(s) along with the ARR for the financial year 2019-20.

**6.2 Short-Term Power Procurement Plan**

6.2.1 The short-term Power Procurement Plan presents assessment of availability and requirement of electricity for a period of one year on a monthly basis.

6.2.2 The short-term Power Procurement Plan shall cover different periods of the day (peak, off peak and seasonal) and take into account the following:-

- a) Availability and Requirement worked out as per Regulation 4&5 both on Peak Demand (MW) and Energy (MUs) basis;
  - b) Impact of the power purchase cost on the ARR for the ensuing year;
  - c) The power banking transactions;
  - d) Renewable purchase obligation;
  - e) Weather forecast and seasonal variations;
  - f) Transmission constraints, if any
- 6.2.3 The short-term Power Procurement Plan for purchase of power shall be the least cost plan [least financial cost to the Distribution Licensee(s)], the ultimate objective being to make available secure and reliable power supply at economically viable tariffs to all consumers while satisfying power supply planning and security standards;
- 6.2.4 Short-term power procurement plan shall be submitted on or before 15<sup>th</sup> September each year in accordance with sub-Regulation 6.8 of these Regulations.

## **7. *Need for Additional Power***

- 7.1 In case, additional procurement of power beyond the quantum approved in the plan is necessitated, the Distribution Licensee(s) shall demonstrate to the Commission's satisfaction that there is a need for such additional power which it intends to procure and shall seek the prior approval of the Commission. It may do this by referring to its most recent Power Purchase Plan approved by the Commission. The Distribution Licensee(s) shall also specify any areas in which its fresh proposal departs from its most recent Power Purchase Plan and shall justify the departure.
- 7.2 The Commission may call for such additional information or particulars or documents as the Commission may consider necessary for approving the power Procurement Plan;
- 7.3 The Commission may, at its discretion, direct the licensee(s) to publish the main details of the demand forecasted and power procurement plan with such particulars and in such manner as the Commission may direct, so as to enable any member of the public who desires to file objections, comments or suggestions, to do so, in the manner indicated in the Conduct of Business Regulations of the Commission. The Commission shall consider such representations before approval of the plan;
- 7.4 The Commission shall decide on the quantum of additional power requirement within 60 days of receiving request complete in all respect.
- 7.5 In case of special circumstances, Commission may issue interim orders in overall public interest.

## **8. *Approval of Power Procurement Plan***

### **8.1 *Short- Term Power Procurement Plan***

- 8.1.1 The Distribution Licensee(s) shall submit the short term Power Procurement Plan including the assessment of availability and requirement of electricity on monthly basis for the ensuing year to the Commission on or before 15<sup>th</sup> September each year.

- 8.1.2 The Commission may call for such additional information or particulars or documents as the Commission may consider necessary for approving the power Procurement Plan;
- 8.1.3 The Commission may, at its discretion, direct the licensee(s) to publish the main details of the demand forecasted and power procurement plan with such particulars and in such manner as the Commission may direct, so as to enable any member of the public who desires to file objections, comments or suggestions, to do so, in the manner indicated in the Conduct of Business Regulations of the Commission. The Commission shall consider such representations before approval of the plan;
- 8.1.4 Commission shall approve such short-term power procurement plan with such modifications or such conditions as may be specified in that order or reject the same after giving the Distribution licensee(s) ample opportunity of being heard by 15<sup>th</sup> November each year.

**8.2 Long Term Power Procurement Plan**

- 8.2.1 The Distribution Licensee(s) shall submit the rolling Long term power procurement plan including the assessment of availability and requirement of electricity prepared in accordance with regulation 6.2 to 6.5 of these Regulations. The rolling plan of next ten years will be filed to the Commission along with ARR of each year, duly updating the preceding Long Term Power Procurement Plan, to take the latest development into account.
- 8.2.2 The Commission shall approve such Long Term Power Procurement Plan with such modifications or such conditions as may be specified in the order along with the Tariff order each year.

**9. Criterion for Power Purchases**

- 9.1 The Distribution Licensee(s) shall effect power purchase or enter into long term or short-term power purchase agreements or arrangements in accordance with the Power Procurement Plan approved by the Commission;
- 9.2 While effecting power purchase, the Distribution Licensee(s) shall adhere to the principle of least cost plan (least financial cost to the Distribution Licensee), the ultimate objective being to make available secure and reliable power supply at economically viable tariffs to all consumers while satisfying power supply planning and security standards.
- 9.3 The Commission may, from time to time, specify criterion for Power Purchase from hydro, co-generation & renewable generating stations. The criterion shall, inter alia, consider any policy directive of State Government, Commission directives on power purchase, allocation including temporary allocation and diversion of power from different sources, generation from conventional and renewable energy sources.
- 9.4 There shall be mechanism of consultation among STU, Transmission Licensee, generating companies and Distribution Licensee(s) & SLDC for formulating Power Procurement Plan. The Distribution Licensee(s) shall make the assessment of availability

and requirement of electricity in consultation with the State Government, all concerned generating companies, Transmission Licensees, Eastern Regional Power Committee, National/ Regional Load Despatch Centre(s), Central Electricity Authority and other concerned entities;

- 9.5 The Distribution Licensee(s) shall endeavour not to import reactive power from the Eastern Grid. Requirement of reactive compensation in the State power system to be provided by Transmission and Distribution Licensee and generating Companies will be finalised in Consultation with ERLDC/SLDC.

## **10. Power procurement procedure**

### **10.1 Short-Term Power Procurement Procedure**

- 10.1.1 After approval of the short term Power Procurement Plan by the Commission, Distribution Licensee(s) shall procure required power through transparent open competitive bidding in accordance with the bidding Guidelines, as amended from time to time, for short term procurement of power under section 63 of the Act or through power exchange or bilateral banking arrangements.
- 10.1.2 The Distribution Licensee(s) shall be free to procure power as per Power Procurement Plan approved by the Commission from any source for meeting short-term demand of power by adopting transparent bidding process as per the bidding guidelines of the Ministry of Power, Government of India referred above and in such case the licensee need not approach the Commission for prior approval but shall intimate about the initiation of such procurement process. These Guidelines shall be binding on the procurer [Distribution Licensee(s)].
- 10.1.3 In case there is any deviation from the bidding Guidelines, the Distribution licensee(s) shall obtain prior approval of the Commission and the Commission shall decide on the modifications to the bid documents within a reasonable time in accordance with provisions of the bidding guidelines;
- 10.1.4 In case of emergency condition arising due to shortage/non-availability of fuel, unplanned/forced outage of a generator etc. which necessitates emergency procurement of power, efforts shall be made to carry out such emergency purchases through Power Exchange. In such case, the license(s) need not to approach the Commission for prior approval.
- 10.1.5 For cost optimization of power purchase cost, efforts shall be made to replace long term power having higher variable rates through purchase from Power Exchange. In such a case, the license(s) need not to approach the Commission for prior approval.
- 10.1.6 For procurement of additional power over and above the quantum approved by the Commission in the short-term power procurement plan, licensee (s) shall seek the prior approval of the Commission.



- 10.1.7 Within 15 days from the date of entering into an agreement or arrangement of short term procurement, the Distribution Licensee(s) shall submit to the Commission providing full details of such agreement or arrangement including quantum, duration, supplier detail, procedure adopted for supplier selection, reasonability of cost and any other detail seeking adoption of the tariff under Section 63 of the Act.
- 10.1.8 The Commission shall adopt the tariff subject to reasonability or reject the same, after giving ample opportunity to the Distribution licensees of being heard, within a reasonable time not exceeding 60 days.
- 10.1.9 Licensee(s) shall submit monthly return to the Commission in the proforma as may be specified by the Commission giving all the details of procurement/sale carried out during the month.

**10.2 Long Term Power Procurement Procedure**

- 10.2.1 Tariff Policy issued by Central Govt. shall be basic guiding principle for any long term power procurement;
- 10.2.2 Unless otherwise approved by the Commission by a general or special order, long-term power purchase or procurement by the Distribution Licensee(s) shall be done through a competitive procurement process;
- 10.2.3 The Competitive Procurement Process shall be as per the bidding Guidelines. These Guidelines shall be binding on the procurers [Distribution Licensee(s)].
- 10.2.4 In case there is any deviation from the bidding Guidelines, the Distribution licensee(s), shall obtain prior approval of the Commission and the Commission shall decide on the modifications to the bid documents within a reasonable time in accordance with provisions of the bidding guidelines;
- 10.2.5 The rate of power purchase in cases of generating companies, which are not covered under the process of competitive bidding as per Section 63 of the Act shall be determined by the Commission under Section 62 of the Act subject to the provisions in Tariff Policy;
- 10.2.6 Any long-term power purchase arrangements made through MOUs and PPAs with the generating companies by the Distribution Licensee(s) prior to the issue of these Regulations will not come under the purview of these Regulations till their validity;
- 10.2.7 All power purchase for a period of more than one year and less than 10 years will be treated at par with long-term power purchase.
- 10.2.8 Within 15 days from the date of entering into an agreement or arrangement of long term procurement, the Distribution Licensee(s) shall submit to the Commission providing full details of such agreement or arrangement including quantum, duration, supplier detail, procedure adopted for supplier selection, reasonability of cost and any other detail seeking adoption of the tariff under Section 63 of the Act.

10.2.9 The Commission shall adopt the tariff subject to reasonability or reject the same, after giving ample opportunity to the Distribution licensee(s) of being heard, within a reasonable time not exceeding 60 days.

**11. Power Purchase Arrangements or Agreements**

11.1 Commencement of power under any new long term or short term power purchase arrangement or agreement and amendments to existing PPA entered into by Distribution Licensee(s), shall be subject to prior approval of the Commission under section 86 of the Act, in respect of:-

- (i) Necessity;
- (ii) Reasonability of cost;
- (iii) Promoting efficiency, economy, equitability and competition ;
- (iv) Conformity with regulations for investment approval;
- (v) Conformity with requirements of quality, continuity and reliability of supply;
- (vi) conformity with safety and environmental standards;
- (vii) Conformity with criterion of power purchase as laid down in these Regulations;
- (viii) Conformity with policy directives of the State Government and policies issued by the Government of India viz. National Electricity Policy, Tariff Policy, long term and short term power procurement bidding guidelines.

**12. Intervention in the Procurement Process**

12.1 Once the Distribution Licensee(s) have begun to implement a procurement process in accordance with these Regulations, the Commission shall not intervene except on the grounds -

- a) of mala fide or improper conduct ; and/or
- b) the manner in which the Distribution Licensee(s) is conducting the procurement process differs materially from its proposal as approved by the Commission; and
- c) on other reasonable grounds.

12.2 These provisions are without prejudice to the Commission's right to investigate and take appropriate action on credible information of malpractice becoming available to it;

12.3 Any investigation of a procurement process will be initiated by a notice of inquiry and conducted in accordance with the Commission's Conduct of Business Regulations. The Distribution Licensee(s) shall not enter into any commitment to procure power or act upon such a commitment pending the outcome of such investigation;

12.4 If the Commission determines that the procurement process was unsatisfactory and not in line with these Regulations, the Commission may order the Licensee(s) to take necessary corrective steps, including requiring it temporarily to suspend the procurement process, or to cancel it and declare the results null and void;

12.5 If the results of the procurement process are declared null and void, the Distribution Licensee(s) shall so notify to the public and bidders;

- 12.6 Nothing in these Regulations shall prevent the Commission from investigating or taking such other action, as it deems appropriate, with respect to a completed power purchase agreement in the exercise of its responsibilities under the Act.
13. **Power to Remove Difficulties.**—If any difficulty arises in giving effect to any provisions of these Regulations, the Commission may by general or specific order, do or undertake or direct the Distribution Licensee to do or undertake things which in the opinion of the Commission are necessary or expedient for removing the difficulties.
14. **Power to Amend.**—The Commission may at any time, vary, alter, modify or amend any provisions of these Regulations.

By the order of the Commission,  
PARMANAND SINGH,  
*Secretary.*

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